IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.379-DB of 2005
Date of Decision: October 16, 2006

The State of Haryana

.....Appellant

VERSUS

1.Shamsher Singh son of Ballu Ram, cultivator, resident of village Dupedi District Karnal.
2.Mahabir Singh son of Kidar Singh, cultivator resident of Village Dupedi District Karnal.
3.Mehar Singh son of Pritu, cultivator resident of village Dupedi District Karnal.
4.Krishan son of Raghbir Singh, cultivator, resident of village Dupedi Police Station Assandh, District Karnal.

.....Respondents

Criminal Appeal No.150-SB of 1993

1.Mehar Singh son of Pritu Jat
2.Krishan son of Raghbir, Jat, residents of village Dupedi Police Station Assandh District Karnal.

...Appellants

Vs.

The State of Haryana ...Respondent

Criminal Appeal No.175-SB of 1993

Shamsher Singh son of Ballu Ram aged 22 years, cultivator resident of village Dupedi District Karnal.

...Appellant

Vs.

The State of Haryana ...Respondent

Criminal Appeal No.177-SB of 1993

Mahabir Singh son of Kidar Singh aged 21 years cultivator resident of village Dupedi District Karnal

...Appellant

Vs.

The State of Haryana ...Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.SS Goripuria, Deputy Advocate General,Haryana
for the appellant.

Mr.Gurmail Singh, Advocate and
Mr.Ashit Malik,Advocate
for the respondents..

R S MADAN, J.

By this order we propose to dispose of Crl.Appeal No.379-DB of 2005, Crl.Appeal No.150-SB of 1993, Crl.Appeal No.175-SB of 1993 and Crl.Appeal No.177-SB of 1993 which have arisen out of a common judgment dated 5/7-5-1993 rendered by the learned Additional Sessions Judge, Karnal in Sessions Case No.23 of 1992. The four accused mentioned in these appeals were tried, convicted and sentenced as under:

Under Section 304 Part-1 IPC	Accused-appellant Shamsher Singh has been convicted and sentenced to undergo R.I. for 10 years and fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for six months.
under Section 324 read with Section 34 IPC	R.I. for one year

under Section 323 read with Section 34 IPC.	R.I. for three months
Under Sections 326 read with Section 34 IPC	Accused Mahabir, Mehar Singh, Krishan are sentenced to R.I. for 2-1/2 years and a fine of Rs.2000/- each, in default of payment of fine to further undergo R.I. for six months.
Under Section 324 read with Section 34 IPC	R.I for one year each
Under Section 323 read with Section 34 IPC	R.I. for 3 months each

All the substantive sentences were ordered to run concurrently.

Criminal Appeal No.379-DB of 2005 **State of Haryana** Vs. **Shamsher Singh and others** was filed by the State for enhancement of sentence awarded by the learned Additional Sessions Judge, Karnal whereas in the other remaining three criminal appeals, the accused have challenged their order of conviction and sentence mentioned above.

In brief, the case of the prosecution is that 20 days prior to the present occurrence which took place on 22-6-1990, Dalbir brother of the accused had exchanged his bullock with the buffalo of Pandit Jagdish in the presence of Satbir Singh deceased. The accused were pressing upon Satbir to say that Rs.2,000/- were also part of the consideration of the said exchange but Satbir did not agree to say so. The accused bore a grudge against Satbir deceased on account of not following their dictates.

It was on 22-6-1990 at 8.30 P.M. that Meer Singh-PW6 along with his son Satbir (since deceased) came out from their house in the gali after taking meals. They saw that Shamsher Singh accused armed with

gandasi, Mehar Singh accused armed with barcha, Mahabir accused armed with barcha and Krishan accused armed with barcha were standing there. On seeing them, Shamsher Singh accused raised a lalkara that Satbir would not be allowed to escape this time and so he inflicted two gandasi blows on the head of Satbir. When Meer Singh complainant stepped forward to save Satbir. Mehar Singh accused gave barcha blows lathiwise on his left elbow and arm while Sheru accused gave a gandasi blow on his forehead and Mahabir gave two barcha blows lathiwise on his left hip and left foot. In the meanwhile, Rajbir came running to the spot but accused Krishan gave barcha blows on his right shoulder whereas Mahabir gave two barcha blows on his head and Mehar Singh gave barcha blow lathiwise on him which hit on his right arm and left arm. In the meanwhile, Rai Singh and Daler Singh, who were brother and sons of Meer Singh, also came to the spot and witnessed the occurrence. On seeing them all the accused managed to escape from the spot with their respective weapons. Daler Singh took the three injured to the Civil Hospital, Assandh in a tractor trolley and got them admitted.

On reaching the Civil Hospital, Assandh, Dr.Amar Bajaj-PW8 medically examined Meer Singh at 10.15 P.M. on 22-6-1990 and found following injuries on his person:

> "1.There was a lacerated wound 3 c.m.x ½ cm. into bone deep over left side of forehead situated 1 c.m. left to mid line, bleeding was present. X-ray was advised.
>
> 2.There was incised wound 2.5 c.m.x1/2 c.m. over medial half of back of left elbow joint. Bleeding

was present.

3.There was incised wound 3.5 c.m.x1/2 c.m. over back of left forearm 5 c.m. below left elbow joint.

4.A defuse swelling over lateral half of left foot movements were painful and restricted. X-ray was advised.

5.Patient was complaining of pain in left hip joint but there was no injury mark.

Injuries No.1 and 4 were kept under observation while other injuries were declared simple in nature. Injuries No.2 and 3 were caused with sharp edged weapon whereas remaining injuries were caused by blunt weapon. Dr.Amar Bajaj sent rukka Ex.PL at 10.45 P.M. to Police Station Assandh, on receipt of which ASI Rattan Singh PW9 came in the hospital and on the application Ex.PM Dr.Amar Bajaj gave opinion Ex.PM/1 that injured was unfit to make statement."

On 23.6.1990 at 1.30 A.M. Dr.Amar Bajaj medico-legally examined Satbir Singh and found the following injuries on his person:-

"1.There was incised wound 18 c.m.x 5 c.m. into bone deep over left tempro-prietal region starting from front of earlobule extending upward and slightly backward and ending at mid line. Wound was perfussely bleeding underlying bone was fractured. X-ray was advised.

2.There was a lacerated wound 3 c.m. x ½ c.m. over posterior part of right parietal region about 3 c.m. right to mid line. X-ray was advised.

Injury No.1 was declared dangerous to life and

was caused with sharp edged weapon whereas injury No.2 was caused with blunt weapon."

On the same date at 1.45 A.M. Dr.Amar Bajaj also medico legally examined Rajbir and found the following injuries on his person:-

1.There was lacerated wound 2 c.m. x ½ c.m. over posterior part of left parietal region 3 c.m. left to mid line.
2.There was lacerated wound 3 c.m. x ½ c.m. over posterior part of right parietal region 2 c.m. right to mid line.
3.There was superficial incised wound 8 c.m. x ½ c.m. over right shoulder joint extending on to right supra scapular region.
4.Reddish contusion 12 c.m. x 3 c.m. over posterior lateral surface of right arm obliquely placed almost in its middle over lying it there was abrasion measuring 4 c.m. x 2 c.m.
5.There was defuse swelling over back of left hand and wrist joint. X-ray was advised.
Injury No.5 was kept under observation while other injuries were declared simple in nature. Dr.Amar Bajaj also sent rukka Ex.PL/1 and Ex.PN/1 with regard to admission of Satbir and Rajbir to Police Station, Assandh on receipt of which ASI Rattan Singh came to the hospital and filed application Ex.PN on which Dr.Amar Bajaj gave opinion Ex.PN/1 at 3 A.M. that Satbir was unfit to make statement."

In the morning ASI Rattan Singh again went to the hospital and after obtaining opinion Ex.PN/2 of the doctor that Meer Singh was fit to make statement, he recorded his statement Ex.PF which was sent

to the police station for registration of the case, on the basis of which ASI Chander Pal recorded formal FIR Ex.PF/2. Thereafter ASI Rattan Singh went to the spot and prepared rough site plan Ex.PQ and lifted blood stained earth from the place of occurrence and took the same into possession in sealed parcel vide recovery memo Ex.PR.

On 27-6-1990, ASI Rattan Singh went to the Civil Hospital, Panipat and obtained opinion of the doctor Ex.PS/1 that Satbir was not fit to make statement. Then at 11.00 A.M. he went to village Dupedi and in the presence of Daler Singh, he arrested accused Krishan from his house, who suffered a disclosure statement Ex.PT and got recovered one barcha from his kotha behind a box. The said statement was reduced into writing duly attested by Ram Phal and Daler Singh, and prepared the rough sketch Ex.PT/1 and took it into possession vide recovery memo Ex.PT/2. Joginder Singh produced accused Shamsher Singh, Mehar Singh and Mahabir Singh before ASI Rattan Singh, who were having gandasis and barchas which were taken into possession vide recovery memos Ex.PU, Ex.PV and Ex.PX after preparing their rough sketches Ex.PU/1, Ex.PV/1 and Ex.PX/1.

Since the condition of Satbir was serious, ASI kept on visiting the Civil Hospital, Rohtak on 8-6-1990, 12-7-1990 and 18-7-1990 but the concerned doctor did not find him fit to make statement to the police. It was thereafter that the investigation of the case was handed over to ASI Hawa Singh PW-10, who received a wireless message on 25-7-1990 regarding the death of Satbir at 10.45 P.M. Accordingly, ASI Hawa Singh went to the Medical College and Hospital, Rohtak and after preparing the inquest report Ex.PE/1, sent the dead body for port mortem examination.

Dr.Sk Sharma PW5 conducted the post mortem examination on the dead body and found one wound on the scalp on left parietal eminence 7 c.m. above left ear and 5 c.m. from mid line and one healed wound on his right parietal eminence 1 c.m. above right ear. The doctor gave an opinion that Satbir died due to shock of head injury and its complication and that injuries were antemortem in nature and sufficient to cause death in the normal course of nature. The present case was converted under Section 302 of the Indian Penal Code. In due course of time and after completing the formalities, challan against the accused was presented in the Court of the Judicial Magistrate Ist Class, Panipat.

After the commitment of the case, the same was entrusted to the Court of the Additional Sessions Judge, Karnal.

After going through the report under Section 173 of the Code of Criminal Procedure, a prima facie case was found against the accused under Sections 323, 324 and 302/34 of the Indian Penal Code. The aforesaid charge was read over and explained to the accused in simple Hindi, to which they pleaded not guilty and claimed trial.

The prosecution relied upon the testimony of 10 witnesses i.e.PW1-Head Constable Chander Singh, PW2-Constable Surat Singh, PW3-Gian Chand, PW4-Dr.CP Sngh, PW5-Dr.SK Sharma, PW6-Meer Singh, PW7-Rajbir, PW8-Dr.Amar Bajaj, PW9-ASI Rattan Singh and PW10-ASI Hawa Singh. The remaining witnesses of the prosecution were given up as un-necessary.

After the case of the prosecution was closed, the accused were examined under Section 313 of the Code of Criminal Procedure in which the entire prosecution version was put to them which they denied

and pleaded innocence and false implication in the case.

The accused did not prefer to lead any evidence in defence.

After going through the prosecution evidence, the learned Additional Sessions Judge did not find any favour with the submissions of the learned defence counsel and recorded the findings of conviction and sentence against the four accused mentioned above.

We have heard the learned counsel for the parties.

The learned State counsel submitted that in the present case the manner in which the occurrence had taken place leaves no manner of doubt that the accused had the intention to kill Satbir (deceased) and in order to achieve this object they were found armed with Gandasi and barchas and inflicted injuries on the person of Satbir as well as to Meer Singh complainant and Rajbir Singh PW. All the three injured soon-after the occurrence were shifted to the Civil Hospital, Assandh where Dr.Amar Bajaj noticed two injuries on the person of Satbir Singh deceased, five injuries on the person of Rajbir and five injuries on the person of Meer Singh. Shamsher Singh accused gave gandasi blow to Satbir Singh (deceased) on his vital part of the body. Out of the two, injury No.1 was declared dangerous to life and was caused with sharp edged weapon whereas injury No.2 was caused with blunt weapon.

According to the learned State counsel, Satbir Singh suffered death on account of these injuries after one month of the occurrence. It has come in the statement of PW5 Dr.SK Sharma that Satbir Singh died due to shock of head injury and its complication and that injuries were antemortem in nature and sufficient to cause death in the

normal course of nature. Therefore, accused Shamsher Singh should have been convicted under Section 302 of the Indian Penal Code and not under Section 304(1) of the Indian Penal Code. Moreover, the co-accused of the Shamsher Singh has also participated in the crime with their respective weapons by causing injuries to Satbir Singh, Meer Singh and Rajbir PW which further shows that they had the common intention to kill Satbir Singh (deceased). Injured Meer Singh-complainant and Rajbir Singh PW suffered injuries while trying to save Satbir Singh (deceased) from the clutches of the accused. Therefore, all the four accused, namely, Shamsher Singh, Mahabir Singh, Mehar Singh and Krishan have committed offences under Sections 302/34, 326/34, 323/34 and 324/34 of the Indian Penal Code.

The arguments of the learned State counsel were also raised before the learned trial Court, who relied upon the observations of the Supreme Court made in **Kartara and another** Vs. **State of Haryana** 1980 PLR 8 and **Kishore Singh and another** Vs. **State of Madhya Pardesh** AIR 1977 SC 2267 wherein para No.15 and at page 2270 of the report, the Apex Court observed as under:

> *"Having regard to the entire evidence and the circumstances of the case and in view of the somewhat hesitant medical opinion with regard to the cause of death given by the three doctors and the further fact that the deceased died a month after the occurrence. We think that clause "3rdly of Sec.300 IPC has not been established beyond reasonable doubt in this case. The evidence fulfils one of the ingredients of Section 299, namely, that the appellants caused the death*

by doing an act with the intention of causing such bodily injury as is likely to cause death as deposed to by the Surgeon."

Applying the dictum laid down in the aforesaid Authority, which is squarely covered by the facts and circumstances appearing in the present case, the learned Additional Sessions Judge converted the offence under Section 302 of the Indian Penal Code into 304 Part-1 read with Section 34 of the Indian Penal Code and convicted and sentenced accused Shamsher Singh thereunder. The learned Additional Sessions Judge has recorded the reasons that in the present case, the occurrence had taken place on 22-6-1990 and Satbir succumbed to his injuries in the Medical College and Hospital on 25-7-1990 i.e. after one month of the occurrence. The death in this case was due to infection of the wound and the fracture in the bone and that patients have survived normally with this sort of fracture. Therefore, the contention of the learned State counsel for converting the sentence of Shamsher Singh accused from 304 Part-1 read with Section 34 of the Indian Penal Code to Section 302 of the Indian Penal Code is not tenable. So far as the remaining accused, namely, Mahabir, Mehar Singh and Krishan qua Satbir deceased is concerned, there was no common intention between the four accused to cause the death of Satbir. It could be a case of common intention only with respect to the causing injuries to Satbir Singh and not to cause his death. Therefore, these accused have been rightly convicted and sentenced under Section 326 read with Section 34 of the Indian Penal Code for causing grievous injuries to Satbir Singh with sharp edged weapon as a fracture was found in parietal bone. All the four accused were rightly convicted and sentenced under

Section 324 read with Section 34 of the Indian Penal Code for causing simple injuries with sharp edged weapon to Meer Singh and Rajbir Singh and under Section 323 of the Indian Penal Code read with Section 34 of the Indian Penal Code for causing simple injuries with blunt weapon to Meer Singh and Rajbir Singh. No interference with respect to the order of conviction of these accused recorded by the learned Additional Sessions Judge, Karnal is called for.

It is a case where the identity of the accused cannot be disputed being the resident of the same locality where the complainant and accused party are residing. The question that the complainant party falsely implicated the accused in the present occurrence is also not tenable because 20 days prior to this occurrence Dalbir brother of the accused had exchanged his bullock with the buffalo of Pandit Jagdish in the presence of Satbir (since deceased), who refused to obey the dictates of the accused party. The accused asked Satbir to say that Rs.2000/- were also part of the consideration of the said exchange.

The learned counsel for the appellants, however, contended that the case relates to the year 1990 and a period of 16 years has elapsed. Accused Shamsher Singh has already undergone sentence of 2 years, 11 months and 21 days. Therefore, the sentence of 10 years awarded by the learned Additional Sessions Judge be modified into a sentence of period already undergone by the accused. The remaining accused, namely, Mehar Singh and Krishan have already undergone 2 months and 24 days each whereas accused Mahabir has already undergone 8 months and 6 days. Therefore, their sentences may be converted into sentences already undergone by them.

We do not find any merit in the submission of the learned counsel for the appellants. However, looking into the facts and circumstances of the case that a period of 16 years has elapsed from the date of the present occurrence, the ends of justice would be met if the period of sentence of 10 years rigorous imprisonment passed by the learned Additional Sessions Judge is reduced to 7 years with no interference on the imposition of fine. So far as the appeal qua remaining accused, namely, Mahabir Singh, Mehar Singh and Krishan is concerned, no case for enhancement of sentence is made out. Accordingly, all the four appeals are hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

October 16, 2006
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